

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB ANRS 13-02 DACS Public Records Exemption

**SPONSOR(S):** Agriculture & Natural Resources Subcommittee

**TIED BILLS:** PCB ANRS 13-01 **IDEN./SIM. BILLS:** SB 1756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Kaiser	Blalock

### SUMMARY ANALYSIS

Article I, s. 24(a) of the State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a). The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

The bill provides that personal identifying information of an applicant for or a participant in a school food and nutrition service program held by the Department of Agriculture and Consumer Services (DACs), the Department of Children and Families (DCF), or the Department of Education (DOE) is exempt from public records requirements.

The bill also provides that such personal identifying information must be disclosed to another governmental entity in the performance of its official duties and responsibilities, or to any person who has the written consent of the applicant for or participant in such program. This does not prohibit a participant's legal guardian from obtaining confirmation of acceptance and approval, dates of applicability, or other information the legal guardian may request. The exemption applies to any information identifying a program applicant or participant held by DACs, DCF, or DOE before, on, or after the effective date of this exemption.

In addition, the bill provides that this public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill creates a new public records exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a). The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in s. 119.07(1), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### School and Food Nutrition Service Program

Current law provides that applicants for or participants in a school food and nutrition service program must provide certain information to the Department of Agriculture and Consumer Services (DACS), the Department of Children and Families (DCF), or the Department of Education (DOE). Some of the information provided is of a confidential nature and is used to determine eligibility for participation in the various programs administered by these agencies. If this information were to become public, it could have a defamatory effect on the individual and cause unwarranted damage to his or her good name or reputation.

#### **Effect of Proposed Changes**

The bill provides that personal identifying information of an applicant for or a participant in a school food and nutrition service program<sup>3</sup> held by DACS, DCF, or DOE is exempt from public records requirements.

The bill provides that such personal identifying information must be disclosed to another governmental entity in the performance of its official duties and responsibilities, or any person who has the written consent of the applicant for or participant in such program. This does not prohibit a participant's legal guardian from obtaining confirmation of acceptance and approval, dates of applicability, or other information the legal guardian may request. The exemption applies to any information identifying a program applicant or participant held by DACS, DCF, or DOE before, on, or after the effective date of this exemption.

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<sup>1</sup> Section 24(c), Article I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> As defined in s. 595.402, F.S.

The bill provides that the exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides the following statement of public necessity as required by the State Constitution:<sup>4</sup>

The Legislature finds that it is a public necessity that personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, Florida Statutes, held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education be made exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In order for a person applying to or participating in a school food and nutrition service program to feel secure in the program, the applicant or participant should be able to rely upon the fact that his or her personal identifying information held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education is protected from disclosure to anyone other than those who have the need to know such information. A public records exemption for personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, Florida Statutes, held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education protects information of a sensitive, personal nature concerning an individual, the release of which could be defamatory to the individual, could cause unwarranted damage to his or her good name or reputation, and could possibly jeopardize the safety of the individual. Additionally, the public records exemption allows the state to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption. Thus, the Legislature declares that it is a public necessity that the personal identifying information of an applicant for or a participant in a school food and nutrition service program, as defined in s. 595.402, Florida Statutes, held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education be made exempt from public records requirements.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 595.409, F.S.; providing an exemption from public records requirements for personal identifying information of an applicant for or participant in a school food and nutrition service program held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education; providing for specified disclosure; providing for applicability; and, providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act.

**Section 2:** Provides a statement of public necessity as required by the State Constitution.

**Section 3:** Provides an effective date contingent upon the passage of PCB ANRS 13-01 or similar legislation.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None

2. Expenditures:

None

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<sup>4</sup> Section 24(c), Art. I of the State Constitution.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill creates a new public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public records exemption; thus, it includes a public necessity statement.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Other Comments: Retroactive Application

The Supreme Court of Florida has ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. The bill does expressly provide that the public records exemption applies to identifying information held before, on, or after the effective date of the exemption.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None